

2008-CA-00874

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IN THE SUPREME COURT OF MISSISSIPPI
CAUSE NO. 2008-TS-00874

WILLIAM PATRICK DALEY

APPELLANT

VS.

CHARLOTTE CARLTON (DALEY)

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

William Patrick Daley
Appellant
522 Carlisle Circle
Madison, Miss. 39110

Honorable Cynthia Brewer
Madison County Chancellor
P.O. Box 404
Canton, Ms. 39181

Charlotte Carlton
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Ridgeland, MS 39157

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STATEMENT OF ISSUE

1) Did the Court err in finding that the Property Settlement Agreement was not ambiguous when it determined William Patrick Dailey was to pay the balloon note?

STATEMENT OF THE CASE

The parties were divorce by Judgment of Divorce entered in Madison County Chancery Court on 27 April 2004 and a Property Settlement Agreement was entered into by the parties as part of the Judgment of Divorce.

In November 2007 Charlotte Carlton filed a Motion for Interpretation of Property Settlement Agreement in the Chancery Court of Madison County seeking "guidance as to the mortgage on the home at 309 Holley Lane, Madison, Miss." She testified that the Property Settlement Agreement was "clearly a very poorly worded agreement". Charlotte Carlton further testified that William Patrick Daley wanted to pay the house payment as a form of alimony so he could have a tax deduction and she reluctantly agreed to that.

The Property Settlement Agreement was prepared by an attorney for Charlotte Carlton.

Under the terms of the Property Settlement Agreement William Patrick Daley was to pay Eight Hundred Ninety Eight Dollars and Fifty Five Cents (\$898.55) in alimony on the property located at 309 Holley Lane, Ridgeland, Miss. until the obligation was paid in full.

Both parties agreed that they knew at the time they executed the Property Settlement Agreement that the balloon note came due in May 2008.

The Chancery Court found that while the Property Settlement Agreement was ambiguous about how the balloon note was to be paid in four years, William Patrick Daley was obligated to pay the entire amount of the mortgage balance as it existed at the time of the divorce, and he was responsible for payment of the balloon note. This ruling would not allow William Patrick Daley to pay the house payment as a form of alimony.

STATEMENT OF FACTS

The parties were divorced by Judgment of Divorce entered in the Chancery Court of Madison County on 27 April 2004 and a Property Settlement Agreement was entered into by the parties as part of the Judgment of Divorce.

On 16 November 2007 Charlotte Carlton filed a Motion for Interpretation of Property Settlement Agreement seeking "guidance as to the mortgage on the home at 309 Holley Lane, Madison, Miss."

Charlotte Carlton testified that the Property Settlement Agreement was "clearly a very poorly worded agreement". (TR-10)

Charlotte Carlton contends that the two assets were his medical degree and the home. She said he got the medical degree and she got the home. (TR-5) Charlotte Carlton testified that William Patrick Daley wanted to pay the house payment as a form of alimony so he could have a tax deduction and she reluctantly agreed to that. (TR-5)

Charlotte Carlton now contends that William Patrick Daley was to pay for the home in full, including the balloon note. (TR-5)

Under the terms of the Property Settlement Agreement William Patrick Daley was to pay Eight Hundred Ninety Eight Dollars and Fifty Five Cents (\$898.55) in alimony on the property located at 309 Holley Lane, Ridgeland, Miss. until the obligation was paid in full.

William Patrick Daley contends that under the terms of the

Property Settlement Agreement he was to pay Eight Hundred Ninety Eight Dollars and Fifty Five Cents (\$898.55) until 5 May 2008, when a balloon note comes due at which time she would refinance or sell the property and his obligation was complete. (TR-16)

Both parties knew at the time they executed the Property Settlement Agreement that there was a balloon note on said property due 5 May 2008. (TR-8) (TR-14)

The Property Settlement Agreement is silent as to the payment of the balloon note.

The Property Settlement Agreement was prepared by an attorney for Charlotte Carlton, (TR-14) who had no consultations with William Patrick Daley concerning this Property Settlement Agreement. (TR-12)

William Patrick Daley had no attorney and did not prepare the Property Settlement Agreement. (TR-12)

The Chancellor found that William Patrick Daley was obligated to pay the entire amount of the mortgage balance as it existed at the time of the divorce, and he was responsible for payment of the balloon note. The decision would deny William Patrick Daley the tax benefit of alimony which was part of the original contract.

SUMMARY OF ARGUMENT

The Chancellor found that the language of the Property Settlement Agreement was ambiguous to the extent it did not address the balloon note was to be paid. The Chancellor then erred in finding that the intent of the parties in the Property Settlement Agreement was clear and unambiguous concerning the provisions for payment of the entire mortgage balance as it existed at the time of the divorce.

Both parties knew the balloon note on the home was due in May 2008 at the time they executed this contract. As the agreement was drawn up by counsel for Charlotte Carlton and William Patrick Daley had no counsel, the ambiguity in this agreement must be construed against Charlotte Carlton to require that she is obligated on the balloon note.

ARGUMENT ON LAW

The Court does not disturb a chancellor's findings unless they are manifestly wrong, unsupported by credible evidence, or the chancellor applied an erroneous legal standard. Bell v. Parker, 563 So.2d 594, 596-7 (Miss.1990). However, this Court reviews questions of law under the de novo standard. Armstrong v. Armstrong, 836 So.2d 794(P 10) (Miss.Ct.App.2002). Contract interpretation involves a question of law.

The husband agreed in the Property Settlement Agreement to pay alimony to the wife in the amount of Eight Hundred Ninety Eight Dollars and Fifty Five Cents (\$898.55) until such time as the mortgage on the property is fully satisfied. The husband and wife further agreed that any additional alimony would be applied fully and solely to the mortgage balance and husband agreed to maintain life insurance for the purpose of paying off the balance in the event of his death. This was to cover the husband and his estates obligation's until the balloon note was due.

The Property Settlement Agreement is absolutely silent as to who pays of the balloon note on the former marital home when it comes due. The case would have been easily prevented if the obligation for the payment of balloon note would have been contained in the Property Settlement Agreement. Then each of the parties would have known who was obligated on the balloon note.

Charlotte Carlton believed that William Patrick Daley was

obligated to pay the balloon note as part of the mortgage when due and William Patrick Daley believed that his obligation on the mortgage was fulfilled when the balloon note came due.

The Chancellor not only found that William Patrick Daley was obligated to pay the entire amount of the mortgage balance as it existed at the time of the divorce, but he was also responsible for payment of the balloon note. This ruling defies the testimony of Charlotte Carlton in agreeing to the tax benefit of alimony for William Patrick Daley.

That "ambiguity arises when a reasonable person could have understood the terms of a contract to have more than one reasonable meaning". Crisler v. Crisler, 963 So.2d 1248, (Miss.2007).

In Beezley v. Beezley, 917 So.2d 803, (Miss.2005) the Court found:

"Where a contract is ambiguous, courts are obligated to pursue the intent of the parties by resorting to parol evidence. In addition, the construction which the parties have placed upon the contract, or what the parties to the contract do thereunder, is relevant extrinsic evidence, and often the best evidence, of what the contract requires them to do. Ambiguities are construed against the party preparing it."

Ambiguities in this Property Settlement Agreement are to be construed against the Charlotte Carlton. In Banks v. Banks, 648 So.2d 1116, 1121 (Miss.1994) the Supreme Court on the issue of interpretation of an ambiguous property settlement agreement said the following:

"In Kight v. Sheppard Bldg. Supply Inc., 537 So.2d 1355, 1358 (Miss.1989), this Court set out the basic principles governing construction of documents:

In interpreting the writing at issue, the cardinal rule of construction is to give effect to the mutual intentions of the parties. Where, as here, the writing is ambiguous, courts are obligated to pursue the intent of the parties by resort to parol evidence. In addition, the construction which the parties have placed upon the contract, or what the parties to the contract do thereunder, is relevant extrinsic evidence, and often the best evidence, of what the contract requires them to do. Finally, the vagueness and ambiguity found in the writing at issue is construed against the party preparing it. (citations omitted).

This principle as set out in Kight has long been the standard of construction when terms of a contract are ambiguous. In Stampley v. Gilbert, 332 So.2d 61 (Miss. 1976), this Court stated:

There is also the universal rule of construction that when the terms of a contract are vague or ambiguous, they are always construed more strongly against the party preparing it. Globe Music Corp. v. Johnson, 226 Miss. 329, 84 So.2d 509 (1956); Love Petroleum Co. v. Atlantic Oil Producing Co., 169 Miss. 259, 152 So. 829 (1934).

332 So.2d at 63. This Court recently adhered to this long standing principle in Merchants Nat. Bank v. Stewart, 608 So.2d 1120 (Miss.1992), stating:

We have construed written instruments narrowly against the drafter when there is uncertainty or ambiguity as to the intent of the parties. Clark v. Carter, 351 So.2d 1333 (Miss.1977); Stampley v. Gilbert, 332 So.2d 61 (Miss.1976); Miss. State, etc. v. Dixie Contractors, 375 So.2d 1202 (Miss. 1979); accord, Baton Rouge Contracting, Co. v. West Hatchie Drainage Dist, 304 F.Supp. 580 (N.D.Miss.1969), aff'd per curiam 436 F.2d 976 (5th Cir.1971); United States v. American National Bank, 255 F.2d 504 (5th Cir.1958)."

The only party with an attorney in this matter was Charlotte Carlton. The Chancellor found that the intent of the parties could be determined from the entire agreement. However, even Charlotte Carlton thought the agreement she had prepared was clearly a very

poorly written agreement. That poor writing must be construed against Charlotte Carlton. The ruling of the Chancery Judge would deny William Patrick Daley of his tax deduction which even Charlotte Carlton testified was part of the agreement.

ARGUMENT

The Chancery Court found that the language of the Property Settlement Agreement was ambiguous to the extent it did not address the balloon note was to be paid. The Chancellor then found that the intent of the parties was clear and unambiguous concerning the provisions for payment of the balloon note in the Property Settlement Agreement and ordered that William Patrick Daley pay. The Opinion and Final Judgment were wrong when the Court found the intent of the parties was clear and unambiguous. If this agreement was to be clear and unambiguous, it just needed to state "William Patrick Daley would pay the lump sum alimony until May 2008 and then pay off the balloon note". William Patrick Daley then would have had the choice, sign the Property Settlement Agreement with that in it or not. Instead of containing clear language, Charlotte Carlton attempts to get the Court to read into the Property Settlement Agreement language which William Patrick Daley did not agree to and did not have any representation or say in the preparation of this agreement. As Charlotte Carlton said, this is "clearly a very poorly worded agreement". The words in the Property Settlement Agreement were chosen by her and her attorney. The ambiguity concerning the payment of the balloon note must be construed against Charlotte Carlton and it must be her obligation to satisfy the mortgage in full.

CONCLUSION

This Court should reverse the ruling of the Chancellor and find that William Patrick Daley is not obligated to pay the balloon note or to make any alimony payments after May 2008.

CERTIFICATE OF SERVICE

I, Christopher A. Tabb, Attorney for Appellant, do hereby certify that I have this day served a copy of this Brief of Appellant by United States Mail with postage prepaid on the following persons at these addresses:

Honorable Cynthia Brewer
Madison County Chancellor
P.O. Box 404
Canton, Ms. 39181

Jeffrey B. Rimes
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This the 24th day of September 2008.


CHRISTOPHER A. TABB